

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DANIELLE LARSON,

Plaintiff,

V.

D. WESTWOOD, INC.,

Defendant.

Case No. 2:15-cv-01372-RFB-GWF

ORDER

13 Before this Court is Defendant's Motion to Compel Arbitration (Dkt. No. 12). For the
14 reasons discussed below, the motion to compel arbitration is granted, pending Motion to Dismiss
15 (Dkt. No. 18) and Motion for Summary Judgment (Dkt. No. 51) are denied without prejudice,
16 and the case is stayed pending the outcome of arbitration.

I. BACKGROUND

19 Plaintiff filed a Complaint against Defendant, her former employer, on July 20, 2015,
20 alleging unlawful employment practices, intentional discrimination, and retaliation, under Title
21 VII of the Civil Rights Act and 42 U.S.C. § 1981(a), and unlawful deprivation of employment
22 under N.R.S. 613.33. (Dkt. No. 1). Defendant operates a gentleman's club and steakhouse in Las
23 Vegas, Nevada, where Larson was hired as a cocktail server in February of 2010. Larson alleges
24 claims of discrimination based on her race and national origin, a hostile work environment, as
25 well as retaliatory termination of her employment.

Defendant filed an Emergency Motion to Compel Arbitration, pursuant to an arbitration clause in Plaintiff's employment contract, on December 7, 2015. (Dkt. No. 12). Plaintiff filed a Response to the Motion to Compel on December 21, 2015. (Dkt. No. 17). Defendant filed a

1 Reply on December 21, 2015. (Dkt. No 19). The Court reviewed Defendant's Emergency
 2 Motion to Compel Arbitration and determined that it need not be considered on an expedited
 3 basis, on December 28, 2015. (Dkt. No. 23).

4 On December 21, 2015, Defendant filed a Motion to Dismiss. (Dkt. No. 18). On May 31,
 5 2016, Defendant filed a Motion for Summary Judgment. (Dkt. No. 51).

6

7 **II. MOTION TO COMPEL ARBITRATION**

8

9 **A. Legal Standard**

10 The Federal Arbitration Act ("FAA") provides that a "written provision in . . . a contract
 11 evidencing a transaction involving commerce to settle by arbitration a controversy thereafter
 12 arising . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or
 13 in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA provides two methods for
 14 enforcing arbitration: (1) an order compelling arbitration of a dispute; and (2) a stay of pending
 15 litigation raising a dispute referable to arbitration. 9 U.S.C §§ 3, 4.

16 "By its terms, the Act leaves no place for the exercise of discretion by a district court, but
 17 instead mandates that district courts shall direct the parties to proceed to arbitration on issues as
 18 to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470
 19 U.S. 213, 218 (1985). The FAA limits the district court's role to determining (1) whether the
 20 parties agreed to arbitrate, and, if so, (2) whether the scope of that agreement to arbitrate
 21 encompasses the claims at issue. Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1175 (9th Cir.
 22 2014). "The Arbitration Act establishes that, as a matter of federal law, any doubts concerning
 23 the scope of arbitrable issues should be resolved in favor of arbitration . . ." Moses H. Cone
 24 Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983). Thus, "[t]he standard for
 25 demonstrating arbitrability is not a high one; in fact, a district court has little discretion to deny
 26 an arbitration motion, since the Act is phrased in mandatory terms." Republic of Nicar. v. Std.
 27 Fruit Co., 937 F.2d 469, 475 (9th Cir.1991). However, "arbitration is a matter of contract and a
 28 party cannot be required to submit to arbitration any dispute which he has not agreed so to

1 submit.” AT & T Technologies, Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648 (1986),
 2 (quoting United Steelworkers of Am. v. Warrior & Gulf Nav. Co., 363 U.S. 574, 582 (1960)).

3 The determination of whether a particular issue should be determined by the arbitrator
 4 rather than the court is governed by federal law. Chiron Corp. v. Ortho Diagnostic Sys., Inc.,
 5 207 F.3d 1126, 1130 (9th Cir. 2000). However, when deciding whether the parties agreed to
 6 arbitrate a certain matter, courts generally apply ordinary state law principles of contract
 7 interpretation. First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995).

8 Section 3 of the FAA provides for a stay of legal proceedings whenever the issues in a
 9 case are within the reach of an arbitration agreement. 9 U.S.C. § 3. Although the statutory
 10 language supports a mandatory stay, the Ninth Circuit has interpreted this provision to allow a
 11 district court to dismiss the action. See Sparling v. Hoffman Const. Co., 864 F.2d 635, 638 (9th
 12 Cir. 1988). A request for a stay is not mandatory. Martin Marietta Aluminum, Inc. v. Gen. Elec.
 13 Co., 586 F.2d 143, 147 (9th Cir. 1978).

14

15 B. Analysis

16 The Court’s role is to determine whether the parties agreed to arbitrate, and whether the
 17 scope of that agreement encompasses the claims at issue. See Nguyen, 763 F.3d at 1175. In this
 18 case, Plaintiff signed an employment contract with Defendant which contained an arbitration
 19 clause establishing mandatory arbitration as the forum for dispute resolution. Dkt. No. 12, Defs’
 20 Ex. A, pp 21-24. The arbitration clause covers “any and all disputes, claims and controversies
 21 arising out of or relating to [the employment] agreement or termination of employment, any
 22 terms or conditions of employment...”. Id. The clause includes a paragraph stating, in relevant
 23 part, that “covered disputes, claims and controversies include, but are not limited to, any and all
 24 disputes, claims and controversies...arising under...Title VII of the Civil Rights Act of 1964...42
 25 U.S.C. § 1981...[and] any other claims arising under Nevada State Law...regulating
 26 employment termination...”. Id. Larson initialed the arbitration provision, and signed the
 27 Employment Agreement. Larson’s Complaint alleges claims under Title VII of the Civil Rights
 28 Act, 42 U.S.C. § 1981, and N.R.S. 613.33 for unlawful deprivation of employment. All of these

1 claims appear to fall within the scope of the arbitration agreement that Larson signed. Nevada
 2 courts hold that agreements to arbitrate are specifically enforceable. Silverman v. Fireman's
 3 Fund Ins. Co., 96 Nev. 30, 604 P.2d 805 (Nev. 1980). In the absence of evidence of contractual
 4 intent to exclude a claim from arbitration, the Nevada Supreme Court has instructed that any
 5 doubts about whether disputes are arbitrable should be resolved in favor of arbitration. See Clark
 6 County Public Employees v. Pierson, 106 Nev. 587, 798 P.2d 136, 142 (Nev. 1990).

7 Plaintiff argues that under N.R.S. 597.995, which requires "specific authorization" for
 8 provisions requiring a person to submit to arbitration, the arbitration clause Larson signed is
 9 invalid. Plaintiff interprets the statutory language regarding "specific authorization" to mean that
 10 an arbitration agreement must be a standalone document. However, N.R.S. 597.995 does not
 11 reference such a requirement, and Plaintiff points to no legal authority, nor is the Court aware of
 12 any such authority, standing for the proposition that a standalone document is required to compel
 13 arbitration. The arbitration provision in the instant employment contract is three pages long. Dkt.
 14 No. 12, Defs' Ex. A, pp 21-24. It is part of the main Employment Agreement, which is eight
 15 pages long. Dkt. No. 12, Defs' Ex. A, pp. 18-23. The employment agreement also contains
 16 various appendices, however the arbitration provision is listed as part of the initial eight-page
 17 document. The arbitration provision is set apart from the other provisions by boldface capital
 18 letters, and required a separate initialing. Id. The signature page of the Agreement contained a
 19 bold face heading stating that "Employment Shall be Deemed to Be Acceptance of the
 20 Arbitration Policy." The Court finds that, under these facts, Larson specifically authorized the
 21 arbitration agreement, and that it did not violate N.R.S. 597.995's requirements.

22 Plaintiff further argues that the arbitration agreement is unconscionable because Larson
 23 was not afforded a meaningful choice, and because the terms of the agreement are favorable to
 24 Defendant. However, Plaintiff does not provide any facts to indicate procedural
 25 unconscionability in the process by which the Agreement was accepted by Larson. Plaintiff
 26 merely argues that, under Ingle v. Circuit City Stores, the instant Agreement should be found
 27 both procedurally and substantively unconscionable. 328 F.3d 1165 (9th Cir. 2004). Ingle is a
 28 case that originated in California, and the Ninth Circuit's analysis in that case is premised

1 entirely on California state contract law principles. Under those principles, the Ninth Circuit held
 2 that in Ingle, a standard arbitration agreement that job applicants were not permitted to modify,
 3 which was a prerequisite to employment, was procedurally unconscionable. See id. Ingle further
 4 held that the clause's application to employment-related legal disputes unfairly limited its
 5 coverage to claims brought by employees, and was therefore one-sided. Id. Additionally, the
 6 Ninth Circuit found that the clause's bar on class-wide arbitration was substantively
 7 unconscionable. Id.

8 California law and Nevada law differ with respect to the enforcement of arbitration
 9 agreements, and Plaintiff cannot rely on the Ninth Circuit's analysis of California contract
 10 principles alone to argue that the instant arbitration agreement is procedurally and substantively
 11 unconscionable. The Nevada Arbitration Act recognizes that "an agreement contained in a record
 12 to submit to arbitration any existing or subsequent controversy arising between the parties to the
 13 agreement is valid, enforceable and irrevocable, except as otherwise provided in N.R.S. 597.995
 14 or upon a ground that exists at law or in equity for the revocation of a contract. N.R.S. 38.219.
 15 As discussed, supra, Plaintiff's argument that the instant arbitration agreement did not include
 16 "specific authorization" under N.R.S. 597.995, merely because it was not a standalone document,
 17 has no basis in Nevada legal precedent. Furthermore, Plaintiff has included no facts to indicate
 18 procedural or substantive unconscionability in the execution of the contract, aside from
 19 comparing the instant case to Ingle.

20 Therefore, the Court finds that the parties agreed to binding arbitration, and that the scope
 21 of the agreement encompasses all of Plaintiff's claims under Title VII, 42 U.S.C. § 1981, and
 22 N.R.S. 613.33. Defendant's motion to compel arbitration is granted.
 23

24 C. Stay

25 Once the court has determined that a dispute falls within the scope of an arbitration
 26 agreement, the proceedings in the case as to the arbitrable issue must be stayed pending the
 27 completion of arbitration. 9 U.S.C. § 3 ("If any suit or proceeding be brought . . . upon any issue
 28 referable to arbitration . . . , the court . . . shall on application of one of the parties stay the trial of

1 the action until such arbitration has been had in accordance with the terms of the agreement . . .
2 .”). Accordingly, the litigation must be stayed pending binding arbitration. Any party may move
3 to lift the stay once arbitration is concluded. All pending motions are denied without prejudice,
4 pending resolution of arbitration and the lifting of the stay.

5

6 **D. Attorney's Fees**

7 Defendant argues summarily that it should be entitled to legal fees for having to bring its
8 motion to compel arbitration, pursuant to the terms of Larson's Employment Agreement. The
9 Agreement contains a clause stating that in “any action...regarding the enforcement of the terms
10 of this Agreement... [Defendant] “is entitled to all...expenses related to such litigation and/or
11 arbitration.” Dkt. No. 12, Defs.’ Ex. A, p 24.

12 Because the litigation in the instant matter is being stayed, the Court reserves judgment
13 on the awarding of attorney's fees pursuant to the Employment Agreement. Once the stay is
14 lifted, Defendant may file a motion for attorney's fees.

15

16 **III. CONCLUSION**

17 For the foregoing reasons, **IT IS ORDERED** that Motion to Compel Arbitration, (Dkt.
18 No. 12), is GRANTED. Motion for Hearing re Motion to Compel, (Dkt. No. 21), is DENIED.

19 **IT IS FURTHER ORDERED** that this litigation is stayed pending the resolution of the
20 arbitration proceeding. Either party may move to lift the stay once arbitration has concluded.
21 Pending Motion to Dismiss, (Dkt. No. 18), and Motion for Summary Judgment, (Dkt. No. 51),
22 are DENIED without prejudice.

23 **DATED:** September 27, 2016.

24

25

26

27

28



RICHARD F. BOULWARE II
United States District Judge